

Reference for a preliminary ruling from the Tribunal administratif (Luxembourg) lodged on 18 July 2011 — DI. VI. Finanziaria S.A.P.A. di Diego della Valle & C. v Administration des contributions directes

(Case C-380/11)

(2011/C 298/23)

Language of the case: French

Referring court

Tribunal administratif

Parties to the main proceedings

Applicant: DI. VI. Finanziaria S.A.P.A. di Diego della Valle & C.

Defendant: Administration des contributions directes

Question referred

Is Article 49 of the Treaty on the Functioning of the European Union to be interpreted as precluding a measure, such as that governed by Paragraph 8a of the Law on capital tax of 16 October 1934, as amended, subparagraph 1 of which makes the grant of a reduction in capital tax conditional upon remaining liable to Luxembourg capital tax for the next five tax years?

Reference for a preliminary ruling from the Administrativen Sad Varna (Bulgaria) lodged on 18 July 2011 — M SAT CABLE AD v Nachalnik na Mitnicheski punkt — Varna Zapad pri Mitnitsa Varna

(Case C-382/11)

(2011/C 298/24)

Language of the case: Bulgarian

Referring court

Administrativen Sad Varna

Parties to the main proceedings

Applicant: M SAT CABLE AD

Defendant: Nachalnik na Mitnicheski punkt — Varna Zapad pri Mitnitsa Varna

Questions referred

1. What is to be understood by the term 'Internet' within the meaning of the Explanatory Notes to the Combined Nomenclature of the European Communities for 2009 (Commission Regulation (EC) No 1031/2008 of 19 September 2008), ⁽¹⁾ which were published in the *Official Journal* of 30 May 2008 (OJ 2008 C 133, p. 1) (amendment in relation to subheadings 8528 90 00, 8528 71 13 and 8528 71 90), if it is used in relation to the classification of goods under TARIC code 8528 71 13 00?
2. What is to be understood by the term 'modem' within the meaning of the Explanatory Notes to the Combined Nomenclature of the European Communities for 2009 (Commission Regulation (EC) No 1031/2008 of

19 September 2008), which were published in the *Official Journal* of 30 May 2008 (OJ 2008 C 133, p. 1) (amendment in relation to subheadings 8528 90 00, 8528 71 13 and 8528 71 90), if it is used in relation to the classification of goods under TARIC code 8528 71 13 00?

3. What is to be understood by the terms 'modulation' and 'demodulation' within the meaning of the Explanatory Notes to the Combined Nomenclature of the European Communities for 2009 (Commission Regulation (EC) No 1031/2008 of 19 September 2008), which were published in the *Official Journal* of 30 May 2008 (OJ 2008 C 133, p. 1) (amendment in relation to subheadings 8528 90 00, 8528 71 13 and 8528 71 90), if they are used in relation to the classification of goods under TARIC code 8528 71 13 00?
4. What is the relevant function (main function) of the set-top box TF6100EMC apparatus, pursuant to which the tariff classification must be carried out: receipt of television signals or the use of a modem which facilitates interactive information exchange for the purposes of gaining access to the Internet?
5. If the relevant function (main function) of the set-top box TF6100EMC apparatus is the use of a modem which facilitates interactive information exchange for the purposes of gaining access to the Internet, is the type of modulation and demodulation which the modem brings about or the type of modem used relevant to the tariff classification, or does it suffice that access to the Internet is provided by means of the modem?
6. Is it permissible for the customs authorities to amend the customs duty classification of a specific product without physically checking the imported product, and for the experts' report to be issued exclusively on the basis of written evidence, namely the user manual, technical characteristics and inspection of a device made by the same manufacturer which has the same number from another imported consignment?
7. Under which subheading and which code should apparatus corresponding to the description of the apparatus TF6100EMC be classified?
8. In the event that the set-top box TF6100EMC is to be classified under the subheading 8521 90 00 of the combined nomenclature, is the application of a positive rate of customs duty lawful as a matter of Community law, if such classification would constitute a violation of the Community's obligations under the Information Technology Agreement and Article II(b) of the General Agreement on Tariffs and Trade 1994, or does classification under heading 8521 entail a conclusion that the set-top box TF6100EMC falls outside the scope of the relevant part of the Information Technology Agreement?

⁽¹⁾ OJ 2008 L 291, p. 1.